HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.3875 of 1999

Dated 13th Day of September, 2006

Between:

Khaja Muneeruddin Ahmed and
another .. Petitioners

And

The Govt. of A.P. rep. by its
Secretary, Municipal Administration
And Urban Development Department,
Secretariat, Hyderabad and two others .. Respondents

O R D E R:

The writ petition is filed for a mandamus directing the respondents 1 and 2 to take appropriate action duly considering the objections raised by the petitioners in their representations including cancellation of building permission accorded to the 3rd respondent in respect of Mulgi No.6 of 205 with new No.6-2-216 at Vijaya Talkies Road Chowrasta, Warangal and demolish the illegal constructions.

It is stated in the affidavit filed in support of the writ petition that the petitioners are the owners of a Mulgi bearing No.6/206 with new No.6-2-217 at Vijaya Talkies Road Chowrasta, Hanumakonda. The 3rd respondent is the owner of an adjacent Mulgi bearing No.6/205 with new No.6-2-216 towards north of the petitioners' mulgi. The petitioners' property is an ancestral property and it is finally settled in the name of the 2nd petitioner by way of a registered will dated 25.7.1997 from Fathimunnisa

Begum, who acquired the property by way of registered sale deed from Mohammad Ali Murtuza Khan and his sons in 1937 (16th Farwardi 1347 Fasli). The 3rd respondent, who is the adjacent mulgi owner, also acquired his title from his ancestors. Originally, the grandmother of the 3rd respondent executed a registered gift deed in favour of the father of the 3rd respondent in 1934. Subsequently, it was mutated in the name of the 3rd respondent. The gift deed of 1934, clearly mentions that the boundary wall towards the north of the petitioners' mulgi or towards the south of the 3rd respondent's mulgi belongs to the mulgi bearing No.6/206. The 3rd respondent himself admitted that there is a common passage of 2 ft. in between the petitioners' building and his mulgi. In fact, a compound wall of 1½ ft. thickness is in existence after this passage and this compound wall is the boundary between these two mulgis. When such is the situation, it is evident that the 3rd respondent invented a new idea of common passage to grab that open space, which is the exclusive property of the petitioners. Even the 3rd respondent, in collusion with the tenant and taking advantage of the litigation stated that the petitioners are strangers to the property and one Sudershan is the owner of the mulgi. It is further stated that the corporation had

demolished a part of the mulgi as well as some portion of the compound wall for road widening in December, 1998. In spite of the objections from the petitioners, the 3rd respondent, taking advantage of this demolition and without obtaining the building permission, demolished the entire compound wall and laid pillars by encroaching 2 feet of the passage area, which is the exclusive property of the petitioners. The construction made by the 3rd respondent is illegal, unauthorized and liable for demolition. It is further stated that the mulgis initially belong to Kore Shankaramma and Kore Siddamma, who had sold to Padmaiah in 1912, then from him to Sardarumusa Begum in 1918 and after her death, her husband i.e. Mohd Ali Murtuza Khan and sons sold to the petitioners in 1937. Towards north of the petitioners' building, which includes the mulgis, the boundary is the house of Shankaramma and Siddamma and the 3rd respondent's mulgi. As way back in 1952, there was a dispute with regard to 2 ft. passage towards north of the petitioners' mulgis. Then, one of the parties having southern boundaries i.e. Shankaramma and Siddamma filed O.S.No.103/1 of 1952 claiming the passage as common passage, but it was dismissed on 30.8.1952. Since the date of this judgment, the petitioners have been in exclusive possession and enjoyment of the passage

without any interference form anybody. While so, now, the 3rd respondent is interfering without any basis and is in collusion with the tenant of the petitioners by taking advantage of the litigation between the petitioners and their tenant. In such circumstances, the petitioners approached this Court praying for a direction.

The 2nd respondent filed both counter and additional counter affidavits. It is stated in the counter affidavit that it is true that the petitioners got issued legal notice and as per the objections raised by them, the officials of the Corporation visited the premises and found no deviation of the plan or encroachment of 2 ft. common passage by the 3rd respondent. This respondent granted permission for removal of old structure and construction of commercial building as per law in Municipal bearing No.6-2-216 by Permit No.214 in Proceedings No.G4-19643-98, dated 9.2.1999. In the additional counter affidavit, it is stated that this Court had directed this respondent to produce the original record and the report of the Town Planning officials in respect of the inspection done by the officials in 1999 for perusal. It is further stated that the 2nd respondent-authority had searched for the original file, but it was found to be misplaced and could not be traced, as such, this respondent-authority, in order to clear the doubt expressed by this Court, made a fresh inspection under

the supervision of the City Planner and found that there is no encroachment by the 3rd respondent. Several other factual details had been narrated in paras 4 and 5 of the additional counter affidavit.

The 3rd respondent filed counter affidavit in detail narrating several factual details and also referred to some civil proceedings in O.S.No.17 of 1982 and would take a stand that all these are factual controversies and this Court cannot decide the dispute.

The 1st petitioner filed a reply affidavit explaining further particulars.

Heard the learned counsel for both the parties.

As could be seen from the respective pleadings of the parties, the main grievance of the petitioners appears to be that their objections had not been considered in accordance with law after giving due opportunity. In the light of the specific stand taken both in the counter affidavit and in the additional counter affidavit filed by the 2nd respondent-Municipal Corporation relating to revisit and re-inspection, this Court is of the considered opinion that in the light of the objections raised by the petitioners, the 2nd respondent had discharged the obligations cast upon it in accordance with law. In the light of the specific stand taken by the 2nd respondent, this Court is of the considered opinion that the other part of the dispute which

is being raised by the petitioners can be appropriately and effectively decided by a competent civil Court and this Court cannot go into those aspects.

Hence, the said questions are left open to the petitioners, however, the stand taken both in the counter affidavit and in the additional counter affidavit filed by the 2nd respondent is hereby recorded and the petitioners are at liberty to approach the competent civil Court if they are so advised for redressal of other grievance if any.

Accordingly, the writ petition is disposed of. No order as to costs.

13.09.2006

bcj